



Riverbank Plaza Limited v City Council of Nairobi (Environment and Land Case 1958 of 2007) [2026] KEELC 574 (KLR) (5 February 2026) (Judgment)

Neutral citation: [2026] KEELC 574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1958 OF 2007**

**JG KEMEI, J
FEBRUARY 5, 2026**

BETWEEN

RIVERBANK PLAZA LIMITED PLAINTIFF

AND

CITY COUNCIL OF NAIROBI DEFENDANT

JUDGMENT

1. The Plaintiff filed in 2006 vide HCCC No 820 of 2006. Upon the establishment of this court, the case was transferred and assigned the current case number. In summary, this matter has had a 20-year chequered odyssey through the corridors of justice.
2. The Plaintiff asserts that it is the registered proprietor of L R No 3734/184 [the suit land] situated along James Gichuru Road, Lavington, within the City County of Nairobi. It acquired the suit land from the Defendant through a transfer registered on 8/3/1993. The Plaintiff took possession of the land, fenced it, paid the applicable rates, and subsequently leased it in 2006 to Lavington Motor Mart Limited. Later that same year, unidentified individuals visited the suit land, claiming that the Defendant had leased it to them. The Plaintiff further contends that the Defendant's actions, including harassment and threats of arrest based on unfounded claims, are fraudulent, illegal, and constitute trespass.
3. Consequently, the Plaintiff sought the following orders.
 - a. A permanent injunction restraining the defendant, by itself, its agents, employees, officers, and/or any other person or entity whatsoever or at all, from trespassing, constructing, damaging, meddling with, alienating, and/or interfering with the suit land.
 - b. General damages for trespass to the suit land
 - c. Costs of the suit.



4. As set out in the amended defence and counterclaim dated 6/2/2017, the Defendant refuted the Plaintiff's claim in its entirety. It asserted lawful title to the suit land and maintains that the Plaintiff's title is illegal, null and void from the outset and liable to be revoked on the grounds of fraud, misrepresentation, and/or illegality, of which the Plaintiff was a party.
5. Details concerning fraud, misrepresentation, and illegality were pleaded under paragraph 8 of the Defence and Counterclaim.
6. In its counterclaim, the Defendant asserted that it was authorised to sell, lease, or otherwise dispose of any of its immovable property in accordance with the provisions of Section 144 of the Local Government Act [LGA]. Any such disposition was contingent on receiving approval and consent from the Minister responsible for Local Government, upon a formal request by the Defendant that specifically details the asset in question, provides reasons for the disposal /approval, and demonstrates compliance with the applicable legal provisions.
7. Under paragraph 18, the details of the illegality were as follows: there were no council minutes seeking approval and/or the surrender of the original title; no sale agreement was executed in respect of the suit land; the consent of the Minister was not obtained; the Commissioner of Lands did not grant its consent to the transfer of the suit land to the Plaintiff; and no consideration was tendered in favour of the Defendant.
8. Furthermore, it was averred that the transfer dated 26/2/1993 and the subsequent registration of the title in the name of the plaintiff on 8/3/1993 were vitiated by fraud, illegality, and breach of trust. Mr. Kuria Wa Gathoni, in his capacity as Director of City Planning & Architecture, was a trustee of the defendant and, in breach of his fiduciary duties, unlawfully transferred the subject land for his personal benefit to the detriment of the defendant. The Plaintiff Company was exploited as a vehicle to facilitate the unlawful scheme and the fraudulent conversion of public property owned by the defendant into personal use.
9. Consequently, the Defendant sought the following reliefs;
 - a. a declaration that the transfer between the City Council of Nairobi and Riverbank Plaza Limited dated 26/2/1993 and its subsequent registration at the Lands Registry at Nairobi on or about the 8/3/1993 in respect of LR No 3734/843 on or about 8/3/1993 was void,
 - b. an order do issue directed at the Chief Lands [sic] for the immediate revocation and cancellation of the registration of the transfer between the City Council of Nairobi and Riverbank Plaza Limited dated 26/2/1993 and that title and ownership in respect of LR 3734/843 in the records at the Lands Registry, such that ownership thereof do immediately revert to the City Council of Nairobi and be extension, the Nairobi City County as is successor in title.
 - c. An order for the immediate delivery and /or release of the original title of LR No 3734/843 by the Plaintiff to the Nairobi City County as successor in title to the City Council of Nairobi.
 - d. A remedial constructive trust be imposed in favour of the Nairobi City Council, as successor in title to the City Council of Nairobi for any and or all mesne profits and or financial benefits obtained and or received from the use of LR No 3734/843 by Riverbank Plaza Limited, any and all its directors, ultimate beneficial shareholders and agents for the duration from 8/3/1993 until the date of judgement (both days inclusive).
 - e. Costs of the suit together with interest at court rates from the date of institution of this suit until payment in full.



The evidence of the parties

10. The evidence on behalf of the Plaintiff was presented by Simon Ndungu, who testified as PW1. He referred to his witness statements dated 20/2/2023 and 4/7/23, and in examination-in-chief, submitted documents marked as PEX No 1-4.
11. The witness introduced himself as the director of the Plaintiff. He stated that in 1991 he identified the site as suitable for developing a shopping and office complex. Subsequently, he applied by letter dated 17/10/1991, addressed to the then Minister for Local Government through the Office of the President, in accordance with the official procedure at that time; the letter was received on 28/11/1991. Upon receipt of the application, the Minister recommended that the Nairobi Plot Allocation Committee approve it. On 5/12/1991, the Nairobi Plot Allocation Committee, which was mandated to allocate plots on behalf of the Nairobi City Commission pursuant to Ministerial Circular No. 20 of 1991, approved the allocation of the land in question. The decision was communicated through a letter dated 28/1/1992.
12. He stated that the allotment was postponed due to changes in the composition of the Nairobi City Commission and the appointment of a new Secretary/Town Clerk at the beginning of 1992. Nevertheless, the allotment letter was issued on 7/8/1992. He remitted Kshs 200,000/- as the standing premium and annual rent on 17/8/1992 and formally accepted the allotment in writing on 18/8/1992.
13. With reference to the Plaintiff's status, he explained that the application for allotment of the suit land was made in the name of Riverbank Plaza, a trade name at the time. However, it assumed corporate status upon its registration on 13/1/1993. Upon registration, he requested that the title be issued in the name of Riverbank Limited. The Defendant executed a transfer in favour of the Plaintiff, which was registered on 8/3/1993, thereby conferring a leasehold interest for a period of 99 years from 1/3/1972.
14. Upon acquisition, the Plaintiff took possession of the land until 2006, when certain individuals, accompanied by City "askaris", entered the disputed land and claimed that the suit land belonged to the Defendant, who had leased it to them. This act of trespass was carried out with the apparent intent to unlawfully seize the land.
15. He indicated that the Plaintiff's title has never been challenged in a court of law, as reaffirmed by the contents of the Plaintiff, and that, due to the harassment and trespass perpetrated by the Defendant in its attempt to assert ownership of the contested land, it has become difficult to secure a tenant, thereby adversely affecting the Plaintiff and resulting in loss and damage. There is no evidence to suggest illegality in the acquisition of the title, and the allegation that the land was obtained fraudulently, owing to the absence of transfer records held by the Defendant, is unfounded.
16. During cross-examination by Mr. Adano, Counsel for the Defendant, the witness stated that the title issued to the Defendant in 1974 contained specific conditions stipulating that the land shall be used as a public library branch and that the grantee [Defendant] shall not sell, transfer, sublet, or charge the land or any part thereof.
17. Regarding the incorporation of Riverbank Plaza, he clarified that the entity was initially registered as a trade name, although he did not provide the incorporation documents to substantiate this claim. He further stated that he applied for land allocation under the trade name in 1991. However, upon its formal incorporation on 13/1/1993, he requested that the title be issued in the name of Riverbank Plaza Limited.
18. The witness further clarified that he applied for allocation to the Minister for Local Government, which was approved by the Permanent Secretary on 28/1/1992. Without producing any resolution,



he stated that he was aware that the County Council of Nairobi had resolved to allocate him land, as evidenced on pages 61 to 63 of his trial bundle. He was issued a letter of allotment on 7/8/1992, as documented on page 10 of his trial bundle. Without presenting any supporting evidence, he stated that he obtained consent from the Ministry of Lands. In closing, he referred to a change of user on page 20 of his trial bundle, which changed the land user to offices, shops, and hotels.

19. Mr Godfrey Cheruiyot, the Director of GIS at the Nairobi City County, solely testified on behalf of the Defendant as DW1. He relied on his witness statement dated 10/7/2019 in chief and produced documents marked as DEX 1-7 on pages 19-37 of the Defendant's trial bundle.
20. He stated that the subject land is public land granted to the defendant in 1972 to hold in trust and use for the establishment of a public library for the benefit of the public.
21. He added that although the law provides for a lengthy process of divesting public land held in trust, in this case there is no documentation supporting such a divestment. Consequently, he concluded that, under these circumstances, the transfer of the suit land to the Plaintiff is marred by fraud and illegality. Additionally, the title to the suit land was unlawfully removed by Kuria Gathoni, the then Director of Physical Planning & Architecture, on 18/4/1992 from the Defendant's custody, as evidenced by the title movement register on page 25 of his trial bundle, and has not been returned to date. Moreover, there are no records in the Nairobi City County to substantiate any dealings with the Plaintiff, the Commissioner of Lands, or the Minister for Local Government concerning the allocation, transfer, or subsequent registration of the disputed land. He stated that it is therefore unclear how the Plaintiff obtained the original title in the first place, in the absence of any correspondence between it and the Defendant. The period of one month and twenty-three days taken to divest the suit land to the Plaintiff further undermines the integrity of the transaction.
22. Under cross-examination by Mr Muriithi, Counsel for the Plaintiff, the witness reiterated that there are no documents in the Defendant's custody supporting the divestment of the land to the Defendant. Referring to the Replying affidavit sworn by Mary Ngethe on behalf of the Defendant [deponing that the title disappeared from its records], the witness stated that although Kuria Gathoni is not a party to the suit, the affidavit indicates collusion between the Plaintiff and the Defendant in the acquisition of the suit land.
23. Citing the provisions of the GLA, the witness outlined the procedure for land application as follows: the applicant submits the application; the application is reviewed for approval by the designated committee of the Defendant; the full Council provides ratification; the Town Clerk forwards the request to the minister for consideration; the minister grants approval; the Commissioner of Lands also grants approval; an allocation letter is subsequently issued to the applicant; the applicant accepts this in writing and proceeds with the payments. In this case, there was no correspondence indicating that this procedure was followed.
24. In conclusion, the witness stated that there was neither the Commissioner of Lands' consent nor ministerial approval for the transfer of the land into the defendant's name, and that the conversion of the land from public to private use was unlawful.

The written submissions

25. At the time of writing this judgment, only the plaintiff had complied with the directions of the court with respect to the filing of written submissions.
26. Regarding the admissibility of documents, the Plaintiff's counsel submitted that the Defendant should not be allowed to contest or disprove the admissibility of documents originating from its offices, as such



actions constitute both approbation and reprobation. The court was urged to consider the provisions of Sections 68 and 69 of the Evidence Act, which authorise the court to admit documentary evidence produced in good faith and relevant to the matter in dispute, notwithstanding any objections aimed at defeating a legitimate claim.

27. Citing the indefeasibility principle as articulated in the case of *Wreck Motor Enterprises v Commissioner of Lands* [1997] eKLR, in conjunction with the provisions of Section 23(1) of the Registration of Titles Act, counsel argued that the plaintiff's title was lawfully obtained and is consequently indefeasible under the law.
28. Pursuant to the provisions of Section 144 of the LGA, counsel submitted that the necessary approval was duly obtained before registration. In any event, once registration was completed, the plaintiff's title became indefeasible, except on the ground of fraud. Any procedural concerns raised by the Defendant cannot, by any stretch of the imagination, vitiate the plaintiff's ownership of the suit land.
29. Upon acquisition, the plaintiff took control and, exercising its proprietary rights under Sections 24 and 25 of the Land Registration Act (LRA), leased the premises to a tenant. Referring to the decisions in *Samuel Kamere V. Land Registrar* [2015] EKLK and *Henry Muthee Kathurima V. Commissioner of Lands & Anor* [2015] EKLK, the plaintiff argued that it was entitled to enjoy its proprietary rights free from any obstruction, hindrance, or interference, as enshrined in Article 40 of the Constitution read together with Section 26(1) of the LRA. The defendant has not adduced any evidence of fraud or misrepresentation attributable to the plaintiff to vitiate its title.
30. It was further submitted that the Defendants' actions in invading, threatening tenants, and interfering with the quiet enjoyment and possession constitute a continuing trespass, entitling the Plaintiff to injunctive and compensatory relief.

Analysis and determination

31. Having considered the pleadings, the evidence adduced at the hearing, the written submissions and all the material placed before the court, the key issues that commend themselves for determination are;
 - a. Whether the title of the Plaintiff was fraudulently and illegally acquired.
 - b. Whether the Plaintiff has proved trespass on the part of the Defendant
 - c. Whether the Plaintiff/Defendant is entitled to the reliefs sought
 - d. Costs of the suit.

Whether the title of the Plaintiff was fraudulently and illegally acquired.

32. In the case of *Hubert L. Martin & 2 Others Vs Margaret Kamar & 3 Others* [2002]eKLR the Court when faced with the same facts had this to say:

“A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore



no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.”

33. It is widely recognised that both the Plaintiff and the Defendant assert proprietary rights to the subject land. The Plaintiff maintains that it obtained a valid title to the property from the Defendant after the application, approval, allocation, payment, and registration processes were completed in its name. The Plaintiff urged the court to determine that it holds an indefeasible title and that the Defendant’s interference with its proprietary rights constitutes trespass.
34. The defendant, on the other hand, asserts that it was granted the title by the President of the Republic of Kenya in 1972, to hold in trust for the people of the City of Nairobi, for the establishment of a public library. Furthermore, no interest or title in the subject land has ever been legally transferred to the Plaintiff. The Plaintiff’s title is alleged to be illegally obtained, and the court was urged to cancel it and revert the suit land to its public status.
35. The principles underpinning the standard of proof in civil cases is on a balance of probability. It is now settled that he who alleges must prove. Sections 107 and 109 of the *Evidence Act*, Cap 80 Laws of Kenya provide as follows: -
 - “ 107. Whoever desires any Court to give judgment as to any legal right or liability dependent on facts which he asserts must prove that those facts exist.”
 109. The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that proof of the fact shall lie on any particular person.”
36. The burden therefore lies with both parties in this case as they both assert ownership claims in respect to the suit land. The court is being called upon to determine who, between the Plaintiff and the Defendant, is the rightful owner of the land.
37. The right to property is safeguarded under the provisions of Article 40 of *the Constitution*, which states, inter alia, that Parliament shall not enact any legislation that permits the state or any individual to arbitrarily deprive a person of property of any kind, interest, or right over any property. However, this protection does not extend to property determined to have been unlawfully acquired. Reference is made to the Provisions of Article 40(6) of *the Constitution* which states as follows;
 - “The rights under this Article do not extend to any property that has been unlawfully acquired.”
38. Section 26 of the *Land Registration Act* which mirrors to a large extent the provisions of Section 143 of the now repealed Registration of *Land Act* [RLA] provides as follows;
 - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed



in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original”.

39. It is now settled law that fraud is a serious allegation which, procedurally, must be pleaded and proved to a standard above the balance of probabilities but not beyond reasonable doubt. At page 427 of Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition, quoting with approval the cases of Wallingford v Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709; Garden Neptune V Occident [1989] 1 Lloyd’s Rep. 305, 308; Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221; and Davy V Garrett (1878) 7 ch. D. 473 at 489, it is stated that:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged. The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (i). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice”.

40. As regards standard of proof in respect to a charge of fraud, the law is quite clear. In R.G. Patel v. Lalji Makanji(1957) EA 314 the former Court of Appeal for Eastern Africa stated thus:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

41. In the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

42. So serious is the charge of fraud and illegality that, when proven, the consequences are dire, as can be seen in the provisions of Section 80 of the *Land Registration Act*, which allow the Court to order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made, or omitted by fraud or mistake.



43. It is undisputed that both parties have exchanged allegations of fraud, misrepresentation, and illegality in their pleadings. Furthermore, the pleadings clearly demonstrate that both parties have articulated and specified these charges in accordance with the applicable legal standards. The subsequent issue, therefore, concerns whether these allegations have been substantiated.
44. In brief, the particulars of fraud and misrepresentation alleged against the Defendant were that it harassed and threatened the Plaintiff while aware that it was the registered owner of the suit land with an original title.
45. On the part of the Defendant, the particulars of fraud and misrepresentation included: the absence of approvals from the Minister of Local Government and the Defendant Council for the sale, transfer and release of the original title to the Plaintiff, rendering the sale and transfer illegal, null and void; colluding with Kuria Gathoni and the Ministry of Lands to convert the title to the Plaintiff's name; no consideration for the transfer; and no consent of the Commissioner of Lands [COL].
46. Before I delve into the issues framed above, there is a fundamental issue that I must address at this point regarding the question of which documents were admitted in evidence by the parties. From the record, the Defendant issued a notice to produce dated 10/7/2019, requiring the Plaintiff to produce the originals of a number of documents, inter alia; certificate of incorporation for Riverbank Plaza Limited, dated 13/1/1993; application for the suit land; all correspondence exchanged with the Defendant in respect of the suit land; the Defendant's approval of the allocation of the suit land in favour of the Plaintiff; approvals and consents from the Commissioner of Lands and the Minister for Local Government to the sale; sale agreement between the Plaintiff and the Defendant; all payment vouchers and receipts for the sale; and transfer of the suit land dated 8/3/1993.
47. The record shows that the hearing of the suit was delayed several times due to the Plaintiff's non-compliance with the notice. Finally, on 27/3/25, the Plaintiff's counsel, while confirming compliance with the trial directions, informed the court that they had fully complied with the provisions of Order 11 of the Civil Procedure Rules and urged the court to certify the matter as ready for hearing. He also stated that the Plaintiff was unable to obtain the original documents requested by the Defendant vide its notice to produce, as stated above.
48. At the hearing, the defendant's counsel objected to the production of the documents that the Plaintiff had failed to obtain and produce the originals, and arguments ensued, culminating in a consent that the documents to be produced and admitted in evidence were Nos 7, 9, 10, and 16, namely; the Plaintiff's certificate of incorporation, the title deed of the suit land, the transfer instrument made between the defendant and the Plaintiff, and the lease dated 20/2/2015 between the Plaintiff and Lavington Palms Limited, respectively.
49. Although in the proceedings, PW1 continually referred to additional documents not enumerated above, such documents remained inadmissible in accordance with the parties' consent and possessed no probative value, as their evidentiary significance ceased once they were not admitted into evidence. I am guided by the precedent set in the case of CMC Aviation Ltd Vs Kenya Airways Limited [Cruisair Ltd] [1978]eKLR where the court stated;

“The pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments are not made on oath. Averments depend upon evidence for proof of their contents.”



50. Moreover, the parties' consent on record has not been set aside, vacated, or appealed. I will therefore determine the dispute based on the evidence placed before the court and admitted in evidence.
51. The subject matter of the suit land, measuring 0.3781 ha, was granted by the President of the Republic of Kenya to the Defendant on 29/3/1974 for a term of 99 years, with effect from 1/3/1972. As a grant, the title contained special conditions under which the grantee held the title. Some of the relevant ones to the suit are;
- “ 3. The land and building shall only be used for the purposes of a public branch library.
 4. The buildings shall not cover a greater area of the land than may be prescribed by the local authority.
 5. The grantee shall not subdivide the land.
 6. The grantee shall not sell, transfer, sublet, or charge the land or any part thereof.
52. Public land is described under Article 62 of *the Constitution* to include;
- a. Land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
 - b. Land lawfully held used or occupied by any state organ except any such land that is occupied by the state organ as lessee under a private lease.
53. In the present case, the description of the suit land aligns with the criteria for public land. Consequently, the Defendant held the land in trust for the residents of the City County of Nairobi, in accordance with the specific limitations set out in the special conditions applicable to this title.
54. It is the Plaintiff's case that he applied for allocation of the land in 1991 for purposes of developing a commercial centre.
55. under Section 3 of the GLA which gave the president power to interalia:-
- a. “(a) subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land;
56. From the above, it follows that only unalienated land could be allocated by the President through the COL. As of 1991, the suit land, which was granted to the Defendant in 1972, could not be characterized as unalienated Government Land and was consequently not available for alienation to any other party, including the plaintiff.
57. The Plaintiff's case hinges on a transfer of the land by the Council, with the approval of the Council and the Minister. The Defendant, on the other hand, reiterates its position that no such approvals were obtained and that the transfer was illegal, null and void.
58. It is acknowledged that any disposal of land by the local authority, including the defendant, was required to adhere to the provisions of the repealed Local Government Act.
59. Section 144 of LGA stipulated as follows;
- “ 144. Acquisition of and dealings in land



- (1) A local authority may, for the purpose of any of its functions under this or any other written law, by agreement acquire, whether by way of purchase, lease, exchange or gift, any land, whether situate within or without the area of the local authority, notwithstanding that the land is not immediately required for that purpose; and where land is so acquired notwithstanding that it is not immediately required for the purpose for which it was acquired, it may, until so required, be held and used for the purpose of any other functions of the local authority.
- (2) A local authority may, subject to the approval of the Minister, apply to the Government or any other authority having power to acquire land for any land required for the purpose of any of its functions to be acquired compulsorily for and on behalf and at the expense of the local authority; and any such purpose shall be deemed to be a public purpose within the meaning of the Land Acquisition Act (Cap. 295) or any enactment replacing the same.
- (3) Any land belonging to a local authority and not required for the purpose for which it was acquired may, with the approval of the Minister and subject to such conditions as he may think fit to impose, be appropriated for any other purpose for which the local authority is authorised to acquire land: Provided that the appropriation of land by a local authority shall be subject to any covenant or restriction affecting the use of the land in its hands.
- (4) On an appropriation of land under subsection (3) of this section such adjustments shall be made in the accounts of the local authority as the Minister may direct.
- (5) A local authority may let, or grant to any person a licence to occupy, any land which it may possess— (a) with the consent of the Minister for any term; (b) without the consent of the Minister, unless such consent is required by section 177 or by any other written law, for a term not exceeding seven years, and may, in respect thereof, charge rents, stand premium or fees. L24 - 63 [Issue 1]CAP. 265 Local Government [Rev. 2012]
- (6) Subject, in the case of land acquired in pursuance of subsection (2), to the provisions of the Land Acquisition Act (Cap. 295), or to any written law replacing that Act, a local authority may, with the consent of the Minister— (a) sell any land which it may possess and which is not required for the purpose for which it was acquired or being used; (b) exchange any land which it may possess for other land, either with or without paying or receiving any money for equality of exchange.
- (7) Capital money received from the sale or exchange of land by a local authority shall be applied in such manner as the Minister may approve towards the discharge of any debt of the local authority or otherwise for any purpose for which capital money



may properly be applied; and where capital money is applied under this subsection for a purpose other than that for which the land the subject of the transaction was held, such adjustment shall be made in the accounts of the local authority as the Minister may direct.

- (8) Nothing in this section shall authorise the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust, covenant or agreement binding upon the local authority; and where under any written law conferring on a local authority a power to acquire land, the power is expressly limited to acquire land by agreement, nothing in this section shall confer on the local authority power to acquire land compulsorily for the purposes of that written law.
- (9) For the purposes of this section references to the functions of a local authority shall be construed as including any such functions as are exercised through a joint committee appointed by such local authority in concurrence with any other local authority or authorities, and any such functions as are exercised through a joint board in relation to which such local authority is or is deemed to be an interested local authority within the meaning of section 105.
- (10) Nothing in this section shall be construed as requiring the Government or other authority acquiring land for a local authority to grant to the local authority the actual or entire interest acquired. [L.N. 634/1963, First Sch., L.N. 34/1965, o. 2.]

60. Taking the tenor and meaning of Sections 144 (2), (3), (6) and (8) cited above , it is clear that land held by the Defendant is classified as public land. Secondly the local authority was permitted under the said Act with the approval of the Minister then for Local Authority and subject to such conditions as he may think fit to impose, be appropriated for any other purpose for which the local authority is authorised to acquire land: Provided that the appropriation of land by a local authority shall be subject to any covenant or restriction affecting the use of the land in its hands.
61. In the instant case, the Plaintiff's case is that the land was allocated to him by the Defendant, making it private property held under an indefeasible title. This allowed the Council to subject the relevant approvals under the Act to the appropriation of the land for any other public use required by it. Divesting the land into private hands was not one of the grounds for appropriation as envisaged in the Act. Moreover, the land was held in trust for the public to establish a public library.
62. Indeed, such divestment was prohibited by the provisions of subsection (8) which stated as follows;

“Nothing in this section shall authorise the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust, covenant or agreement binding upon the local authority.
63. Guided by the above provisions, I have established that the land was neither available for sale nor for disposal for two reasons: firstly, the special conditions prohibited the sale, lease, and/or encumbrance



of this land; and secondly, the land did not belong to the Defendant, as it was held in a fiduciary capacity for public purposes. It was therefore classified as public land and not for sale.

64. Even if, for the sake of argument, this parcel of land were to be sold, the procedure set out in Section 144 of the Local Government Act (LGA) must be followed. The Plaintiff has failed to provide any evidence that the transaction received approval from the Minister for Local Government and/or was consented to by the Commissioner of Lands. If the public need had been satisfied, the defendant was required to surrender the land to the Commissioner of Lands, which would consequently become part of the unalienated inventory of Government Land. In my view, the alleged change of user from trust land for the establishment of a public library, dated 15/2/93, did little to cure the illegality.
65. The Defendant has alleged that the title to the suit land was unlawfully obtained by a former official of the Defendant, as demonstrated by the Title Movement register on page 25 of the Defendant's trial bundle. Although the said official was not enjoined to the suit, the Plaintiff failed to present any evidence in rebuttal before the court. Furthermore, there were no documents indicating how the title was transferred to the Plaintiff. It is worth noting that there was no sale agreement outlining the procedures for providing the completion documents to the Plaintiff. Titles, being intangible, do not have minds or legs to move from one owner to another. In the absence of any contrary evidence, the movement of the title therefore remains clouded with doubt.
66. I am guided with the decision of the Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* (2013)eKLR pronounced itself as thus;
- “we state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is challenged and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances.”
67. The Plaintiff has not sufficiently demonstrated the legality of the transaction; consequently, the court finds that the Defendant has established that in spite of the conditions limiting lease sale and or charge of the land in the grant, any purported sale and transfer therefore remain fraudulent and illegal rendering the registration of the title in the name of the Plaintiff illegal, null and void.
68. Considering the Sale has been declared null and void, I observe that the Plaintiff did not obtain any rights, interests, or ownership in the subject land that are enforceable under the law.
69. Mandated by the provisions of Section 80 thereof of the LRA, the court finds that this is a title that is suitable for cancellation.
70. Is the Plaintiff entitled to orders of trespass? Section 3 (1) of the *Trespass Act*, Cap 294 provides that:
- “Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence
71. Having found that the suit land was illegally transferred to the Plaintiff, I see no need to consider this prayer. It is moot. A similar fate befalls the prayer for injunctive orders
72. Has the Defendant proven entitlement to mesne profits? It is the Defendant’s case that the Plaintiff has occupied the premises since 1993 or thereabouts, thereby generating income at the expense of the Defendant. It is trite that mesne profits are akin to special damages and, as such, must be pleaded and



proven. The Defendant failed to lead any evidence in support of this claim and, consequently, it cannot be granted.

73. In the end, I find that the Plaintiff's claim fails. It is dismissed. Consequently, I enter judgment in favour of the Defendant in the counterclaim as follows;

- a. a declaration that the transfer between the City Council of Nairobi and Riverbank Plaza Limited dated 26/2/1993 and its subsequent registration at the Lands Registry at Nairobi on or about 8/3/1993 in respect of LR No 3734/843 on or about 8/3/1993 was illegal, null and void.
- b. an order do issue directed at the Chief Lands [sic] for the immediate revocation and cancellation of the registration of the transfer between the City Council of Nairobi and Riverbank Plaza Limited dated 26/2/1993 and that title and ownership in respect of LR 3734/843 in the records at the Lands Registry, such that ownership and title thereof do immediately revert to the City Council of Nairobi and be extension, the Nairobi City County as is successor in title.
- c. The Land Registrar is hereby mandated to issue a title in the name of the Defendant forthwith.
- d. An order for the immediate delivery of possession and /or release of the original title of LR No 3734/843 by the Plaintiff to the Nairobi City County as successor in title to the City Council of Nairobi be and is hereby issued.
- e. The order for mesne profits was not proven. It is hereby dismissed.
- f. Costs of the suit together with interest at court rates from the date of institution of this suit until payment in full are in favour of the Defendant.

74. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr Muriithi HB for Prof Kariuki Muigua for the Plaintiff

Mr Adano for the Defendant

CA- Ms. Yvette Njoroge

